

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
5:09-CV-187-FL

SMITHBROS. TRUCK GARAGE, INC.)
d/b/a SMITH INTERNATIONAL)
TRUCK CENTER,)

Plaintiff,)

v.)

DOLPHIN LINE, INC.; NAVISTAR)
INTERNATIONAL CORPORATION;)
WARD INTERNATIONAL TRUCKS,)
INC.; WARD INTERNATIONAL)
TRUCKS, LLC; WARD)
INTERNATIONAL TRUCKS OF)
ALABAMA, LLC; SOUTHWEST)
INTERNATIONAL, INC.; and)
SOUTHLAND INTERNATIONAL)
TRUCKS, INC.,)

Defendants.)

**MEMORANDUM AND
RECOMMENDATION**

This case comes before the court concerning six dispositive motions (D.E. 25 & 26, 28, 31, 38, 40, 41) which were referred to the undersigned for memorandum and recommendation by Chief United States District Judge Louise W. Flanagan (D.E. 59). Four of the motions (D.E. 25 & 26,¹ 28, 31, 40) seek dismissal of the complaint, and two (D.E. 38, 41) seek dismissal of the crossclaims of defendant Dolphin Line, Inc. (“Dolphin”). Since the time that the motions were referred, a stipulation has been filed dismissing with prejudice all the claims by plaintiff against all of the defendants except Dolphin (collectively “settling defendants”) (D.E. 61). Although this dismissal

¹ D.E. 26 is a continuation of D.E. 25, not a separate motion.

left unclear whether the crossclaims asserted by Dolphin had been resolved, Dolphin has subsequently filed a dismissal without prejudice of its crossclaims. (D.E. 66).

The dismissals leave as the only remaining claims in the case plaintiff's claims against Dolphin. The dismissals thus moot the motions which had been referred to the undersigned for memorandum and recommendation. IT IS THEREFORE RECOMMENDED that the referred motions (D.E. 25 & 26, 28, 31, 38, 40, 41) be DENIED AS MOOT.

The Clerk shall send copies of this Memorandum and Recommendation to counsel for the respective parties, who have ten business days, or such other period as the court specifies, to file written objections. Failure to file timely written objections bars an aggrieved party from receiving a de novo review by the District Judge on an issue covered in the Memorandum and Recommendation and, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the District Judge.

This, the 16th day of November, 2009.


James E. Gates
United States Magistrate Judge